



COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA PUBLIC UTILITY COMMISSION  
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE  
REFER TO OUR FILE

November 2, 2012

Rosemary Chiavetta, Secretary  
PA Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265

Re: C-2011-2245312

Re: Pennsylvania Public Utility Commission Bureau of Transportation and  
Safety v. Blue and White USA, Inc. t/d/b/a Altoona USA & Transfer.:  
C-2011-2245312 and C-2011-2244900

Dear Secretary Chiavetta:

Enclosed, please find the Bureau of Investigation and Enforcement's Brief in this matter. A Certificate of Service is attached, pursuant to 52 Pa. Code §1.57 and §1.58.

Respectfully submitted,

Heidi Wushinske, Prosecutor  
Bureau of Investigation and Enforcement

Enclosure

SECRETARY'S BUREAU  
PA PUC

2012 NOV -2 PM 3: 29

RECEIVED

**BEFORE THE PENNSYLVANIA  
PUBLIC UTILITY COMMISSION**

**Pennsylvania Public Utility Commission** :  
**Bureau of Transportation and Safety** :  
 :  
v. : **Docket No. C-2011-2245312**  
 : **C-2011-2244900**  
**Blue and White USA, Inc. t/d/b/a** :  
**Altoona USA & Transfer** :

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**COMPLAINANT PENNSYLVANIA PUBLIC  
UTILITY COMMISSION'S BRIEF IN SUPPORT OF CIVIL PENALTY AND  
SETTLEMENT AGREEMENT**

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Heidi L. Wushinske  
Prosecutor

Wayne T. Scott  
First Deputy Chief Prosecutor

P.O. Box 3265  
Harrisburg, PA 17105-3265  
(717) 787-5000

Dated: November 2, 2012

SECRETARY'S BUREAU  
PA PUC

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## **STATEMENT OF THE CASE**

Pursuant to its enforcement responsibilities, the Public Utility Commission's (Commission) Bureau of Transportation and Safety (BTS)<sup>1</sup> issued two complaints (C-2011-2245312 and C-2011-2244900) against Blue and White USA, Inc. t/d/b/a Altoona USA & Transfer (Blue and White) for violations found during inspection of Respondent's vehicles. Blue and White submitted a check for partial payment in response to C-2011-2245312 and in C-2011-2244900, filed a timely answer in which it alleged that it fixed the violations the same day. The Honorable Mary D. Long held a hearing on both complaints on September 27, 2012, at which both parties appeared. I&E presented the testimony of one witness in C-2011-2244900. Blue and White was not represented by counsel and therefore presented no testimony. After a brief recess, I&E reached a Settlement with Blue and White in C-2011-2245312 and summarized the terms of the settlement for the record. In an Interim Order dated October 15, 2012, Judge Long ordered I&E to file a memorandum of law in support of the penalty in the first complaint and a statement in support of the settlement reached in the second complaint.

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<sup>1</sup> Due to the Commission's reorganization, this matter, which was originally assigned to the Bureau of Transportation and Safety, is now assigned to the Bureau of Investigation and Enforcement.

## ARGUMENT

### **A. The Civil Penalty Requested in the Complaint at C-2011-2244900 is Justified**

Although section 3301 of the Public Utility Code authorizes the Commission to levy civil penalties of up to \$1,000 in assessing civil penalties for motor carrier complaints, the Commission's Bureau of Technical Utility Services (TUS) follows penalty guidelines. *See* 66 Pa. C.S. § 3301; *Penalty Guidelines* (attached as Attachment A). In this case, TUS followed the penalty guidelines in assessing a civil penalty of \$100 for failure to have operative air conditioning in the vehicle inspected, in violation of 52 Pa. Code § 29.403(8). As indicated on page six of the penalty guidelines, no air conditioning is listed as \$100 per violation. Similarly, failure to have a battery securement device is a \$100 violation according to the penalty guidelines. (*See* *Penalty Guidelines* page 5 (out of service safety violations)). Although TUS has the authority to levy civil penalties of up to \$1,000 per day that the violation continues, it generally follows the penalty guidelines to ensure consistency. In this case, TUS followed the penalty guidelines and proposed civil penalties consistent with the Commission's actions in similar cases.

### **B. The Settlement Agreement Reached in the Complaint at C-2011-2245312 is in the Public Interest and Should be Approved**

Approval of the Settlement Agreement reached in this matter (attached as Attachment B) is consistent with the Commission's *Policy Statement for Litigated and Settled Proceedings Involving Violations of the Public Utility Code and Commission Regulations*

(“Policy Statement”), 52 Pa. Code § 69.1201; *See also Joseph A. Rosi v. Bell-Atlantic-Pennsylvania, Inc.*, C-00992409 (March 16, 2000).

Under the Policy Statement, the Commission will consider specific factors when evaluating settlements of alleged violations of the Public Utility Code and the Commission’s Regulations. These factors are: (i) Whether the conduct at issue was of a serious nature; (ii) Whether the resulting consequences of the conduct at issue were of a serious nature; (iii) Whether the regulated entity made efforts to modify internal policies and procedures to address the conduct at issue and prevent similar conduct in the future; (iv) The number of customers affected and the duration of the violation; (v) The Compliance history of the regulated entity that committed the violation; (vi) Whether the regulated entity cooperated with the Commission’s investigation; (vii) The Amount of the civil penalty or fine necessary to deter future violations; (viii) Past Commission decisions in similar situations; and (ix) other relevant factors. 52 Pa. Code § 69.1201(c).

The Commission will not apply the standards as strictly in settled cases as in litigated cases. 52 Pa. Code § 69.1201(b). While many of the same factors and standards may still be considered, in settled cases the parties “will be afforded flexibility in reaching amicable resolutions to complaints and other matters so long as the settlement is in the public interest.” 52 Pa. Code § 69.1201(b).

The first factor considered in this case was whether Respondent’s alleged acts and omissions amounted to willful fraud or misrepresentation, or were merely administrative or technical errors. The alleged conduct in this case involves

failure to have operative air conditioning in a vehicle used in taxi service. While this is a violation of the Commission's regulations, it does not rise to fraud or misrepresentation.

The second factor considered in this case was whether the resulting consequences of Respondent's alleged actions or omissions were of a serious nature. In this case, Respondent's alleged conduct did not result in any serious consequences.

Although, there is potential for discomfort of the traveling public when air conditioning in a taxi is not functioning, there is no indication that this happened in this case.

Furthermore, it is rare that a malfunctioning taxi air conditioner would result in serious consequences.

The third factor to be considered in this case, namely, whether Respondent's alleged conduct was intentional or negligent, does not apply to the present case because this proceeding is a settled matter. To the extent this factor is to be considered, it appears that Respondent's conduct was negligent in nature.

With regard to the fourth standard in the Commission's Policy Statement, whether the entity made efforts to modify internal policies and procedures to address the alleged conduct at issue and to prevent similar conduct in the future, Respondent stated that the air conditioning was fixed later that day.

The fifth standard in the Policy Statement deals with the number of customers affected and the duration of the violation. In this case, there is no evidence that any customers were affected. The air conditioning was found to be inoperative during an inspection performed by a Commission Enforcement Officer and Respondent stated that he fixed the air conditioning later that day.

The Policy Statement's sixth standard is a consideration of the compliance history of the entity. Respondent has held a certificate from this Commission since 2003. Overall, the Commission has issued eight formal complaints against Respondent, including the two at issue in this memorandum. While, Respondent's compliance history is not entirely favorable, it did takes steps to promptly correct the violation.

The seventh standard in the Policy Statement is whether the regulated entity cooperated with the Commission's investigation. Respondent has cooperated throughout this investigation.

The amount of the civil penalty or fine necessary to deter future violations is the eighth standard in the Policy Statement. The parties submit that a civil penalty in the amount of Fifty Dollars (\$50), is sufficient to deter Respondent from committing any violations in the future, as the recommended civil penalty for this violation is only one hundred dollars (\$100). This Settlement Agreement recognizes Respondent's good faith efforts to comply with the Commission's regulations .

The ninth standard examines past Commission decisions in similar situations. Counsel is not aware of any decisions with this precise fact pattern. However, when all relevant factors are taken into account, this settlement is consistent with past Commission actions. Moreover, since this is a settled matter, it should be considered on its own merits.

The parties submit that an additional relevant factor – whether the case was settled or litigated – is of pivotal importance to this Settlement Agreement. A settlement avoids the necessity for the prosecuting agency to prove elements of each allegation. In

return, the opposing party in a settlement agrees to a lesser fine or penalty. Both parties negotiate from their initial litigation positions. The fines and penalties in a litigated proceeding have always been different from those that result from a settlement.

WHEREFORE, the Pennsylvania Public Utility Commission's Bureau of Investigation and Enforcement urges this Honorable Administrative Law Judge to uphold the civil penalty sought in C-2011-2244900 and approve the settlement agreement reached in C-2011-2245312.

Respectfully submitted,



Heidi L. Wushinske  
Prosecuting Attorney  
Attorney ID No. 93792

P.O. Box 3265  
Harrisburg, PA 17105-3265  
(717) 787-5000  
**Date: November 2, 2012**



# PENALTY GUIDELINES

## PUC Motor Carrier Services & Enforcement

(\$10,000 cap on complaints, unless safety related)  
(fine amount format)

**Certificate Cancellation plus \$1000 per violation per day**  
*(this is the maximum fine permitted)*

Operating while certificate is under suspension –  
when a lapse in insurance coverage occurred. 52§32.2, 52§32.11, 66§501(c)

**Certificate Cancellation plus \$500**

Failure to file evidence of insurance –  
no evidence of operating during suspension. 52§32.2, 52§32.11

Failure to pay past due fines. 66§501(c)

Failure to pay past due assessments. 66§510

**Certificate Cancellation plus \$250**

Failure to submit to SFR. 66§501(c) & 66§1501

**Certificate Cancellation**

Abandonment of service. 52§3.381(a), 66§1102(a)(2)

Failure to pass Safety Fitness Review. 66§501(c) & 66§1501

Failure to file tariff with rates based on: Meter – Taxis 52§29.314(b)(6)  
Time – Limos 52§29.334  
(after one complaint adjudication for same violation)

# PENALTY GUIDELINES

(continued)

## \$1000 per violation

All Critical\* violations found during Bus/Truck Audits  
(plus cancellation if over \$10,000)

|   |  |                 |
|---|--|-----------------|
| False documentation to cover violations.  | Logs -                                       | 52 §29.313(c)   |
|   | Receipts –                                   | 52 §29.313(f)   |
|   | Character –                                  | 66 §1501        |
| Operating without holding a certificate of public convenience.<br>(Maximum \$1,000 per complaint)<br>(The carrier's vehicle registration will also be suspended by PDOT.)         |  | 66§1101         |
| Disqualified driver operated a vehicle.<br>(convicted of felony or misdemeanor relating to<br>Suitability to provide safe and legal service).                                     |  | 52§29.505(c)    |
| Disqualified hhgs worker.   |  | 52§31.134(c)    |
| Controlled substance/alcohol found during<br>roadside inspections or investigations.  | Alcohol                                      | 52§29.506       |
|   | Controlled Substance                         | 52§29.507       |
| Household Goods violations –  |  |                 |
| Failure to relinquish goods upon payment of estimate + 10% or \$25.   |  | 52§31.123       |
| Disqualified employee (convicted of felony or misdemeanor<br>relating to suitability to provide safe & legal service)<br>packed/unpacked, loaded/unloaded, or operated a vehicle. |  | 52§31.134(c)    |
| Unauthorized transportation (service type violation only;<br>Example - limos performing taxi service).  | All types.                                   | 66§1102         |
|   | Limo as taxi – no advance order for service. | 52§29.332(1)    |
|   | Limos soliciting passengers.                 | 52§29.332(3)    |
|   | Meter in limo.                               | 52§29.334       |
| Household goods carriers - no weight tickets for moves over 40 miles –<br>if found arising from a consumer complaint about overcharge.  |  | 52§31.125       |
| Operating Out-Of-Service vehicle before being repaired.   |  | 52§29.406(e)    |
| No meter in taxi.   |  | 52§29.314(b)(1) |
| Inoperative meter.  |  | 52§29.314(b)(7) |

\* Critical Violations are those which pose an imminent hazard and have the greatest potential to cause or contribute to an accident.

# PENALTY GUIDELINES

(continued)

**\$500 per violation per day**

|  |  |  |
|--|--|--|
| Operating while under suspension for insurance –<br>no lapse in coverage.  |  | 52§32.2, 52§32.11, 66§501(c)   |
| Any refusal of service.  |  | 52§29.313(a)   |
| Lack of control of transportation<br>(leasing authority to others or to drivers).  | passenger, except taxi<br>taxi             | 52§29.101(a)(5)<br>52§29.101(f)(2)(i)  |
| Inadequate, unreasonable service – major violations:<br>(not showing up, more than ½ hr late, etc. – fine will be \$500).<br>(for minor violations of unreasonable, unsafe service:<br>smoking, unsafe cell phone usage while customer in vehicle, etc. – fine will be \$250). |  | 66§1501<br>66§1501   |
| All Serious** violations (except hrs of service) found during Bus/Truck Audits.  |  |  |
| Tariff overcharge violation. (No refunds ordered under \$10)<br>(if an audit – undercharge violations<br>due to fuel surcharge, one fine for<br>entire audit)<br>See \$250 page also.  | All types<br>PT<br>Taxi<br>GP<br>AT<br>HHG | 66§1303<br>52§29.255<br>52§29.314(b)(6) & 29.316<br>52§29.324<br>52§29.343<br>52§31.27 |
| Failure to cooperate with an officer's investigation.<br>Each day is a separate violation, with a maximum penalty<br>of \$10,000/month of not producing documents requested<br>during investigation or refusing to allow investigation.<br>(20 working days x \$500)           |  | 66§505   |
| Void in service longer than 5 days w/o notifying Commission.   |  | 52§29.62   |
| False Record of Duty Status violations found<br>on random inspections or investigations.   |  | 52§29.508 (a)(2)   |
| Unauthorized transportation (outside area).  |  | 66§1102  |
| Over-aged vehicle.   | Taxi<br>Limo                               | 52§29.314(d)<br>52§29.333(e)   |

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\*\* Serious Violations are those which indicate the carrier has ineffective safety management controls and/or regulatory non-compliance problems attributing a high probability to cause or contribute to an accident.

# PENALTY GUIDELINES

(continued)

## \$250 per violation

Hours of Service violations (4 or more) found during Bus/Truck Audits.

|  |           |
|--|-----------|
| Tariff undercharge violations (except limousines or GP-15). *** All types. | 66§1303   |
| PT   | 52§29.255 |
| Taxi 52§29.314(b)(6) & 29.316  |           |
| AT   | 52§29.343 |
| HHG  | 52§31.27  |

Taxi – no tariff submitted with rates based on meter. 52§29.314(b)(6)

Limos charging rates other than those based on time  
OR no tariff submitted with rates based on time. 52§29.334

Invalid State Inspection. 52§29.405

No dome light on taxi. (see pg 5 for non-illuminated dome light) 52§29.314(e)

No criminal history record on driver. 52§29.505(a)  
(see next page for no **current** criminal history record  
and for no driver history record)

### Household Goods Carriers Violations:

Information for Shippers not provided to shipper 48 hours prior to move. 52§31.121(c)

Estimated Cost of Service not provided to shipper 48 hours prior to move. 52§31.122(a)

Bill of Lading not provided to shipper within 15 days of move. 52§31.132(b)

Insurance Claim violations. 52§32.16

No criminal history record on employees. 52§31.134(a)

(see next page for no **current** criminal history record)

Failure to File Assessment Report. 66§510(b)

|  |      |              |
|--|------|--------------|
| No vehicle list filed.                           | Taxi | 52§29.314(c) |
| (See next page for list filed with missing info) | Limo | 52§29.333(d) |

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\*\*\*Note to Specialist: To impose a penalty, the undercharge must be more than 10% and an informal complaint investigation or audit must have been involved.

# PENALTY GUIDELINES

(continued)

**\$200 per violation**

Operating while driver's motor vehicle license is under suspension, revoked or expired. 52§29.502 & 75§1543(a)

**\$100 per violation**

|                         |            |           |
|-------------------------|------------|-----------|
| Tariff undercharges***. | All types. | 66§1301   |
|                         | GP 11-15   | 52§29.324 |
|                         | Limo       | 52§29.334 |

Non-illuminated dome light when required or dome light not visible from 100 ft front and rear (example: obscured by ad) - (taxi) 52§29.314(e)

No driver history obtained. 52§29.504  
 No **current** criminal history obtained. 52§29.505(b) or (a) if initial one

Hours of Service violations (1-3) found during Bus/Truck Audits.

Minor\*\*\*\* violations (1st group of 3 + each subsequent violation) found during Bus/Truck Audits.

Out of Service\*\*\*\*\* Safety violations 67§229.16 or 231.9  
 (one fine per type of violation per vehicle). (Example: door violation)

|   |                                |                    |
|---|--------------------------------|--------------------|
| Non-Out of Service***** Safety violations (1st group of 5). |                                | 67§229.14 or 231.7 |
| Exception: no Medical Certificate or expired - \$100 each   | 52§29.508(a)(1) & 52§37.204(3) |                    |
|   | Who must have one              | 49CFR§391.45(b)    |
|   | May not operate                | 49CFR§391.41(a)    |

|   |      |              |
|---|------|--------------|
| Vehicle list missing required information.<br>(See previous page for NO vehicle list filed) | Taxi | 52§29.314(c) |
|   | Limo | 52§29.333(d) |

\*\*\*Note to Specialist: To impose a penalty, the undercharge must be more than 10% and an informal complaint investigation or audit must have been involved.

\*\*\*\* Minor Violations are those which indicate the carrier has ineffective safety management controls or regulatory non-compliance problems. Example: failing to maintain a driver qualification file on each driver employed containing each of the items required for the specified time period.

\*\*\*\*\* The OOS Criteria for small vehicles is based upon the rejection criteria from the PA DOT's Vehicle Equipment and Inspection standards, 67 Pa. Code §175.

# PENALTY GUIDELINES

(continued)

## \$100 per violation (continued)

|  |   |              |
|--|---|--------------|
| Household Goods Carriers -   |   |              |
| Information for Shippers -   | not retained by carrier                                 | 52§31.121(b) |
|  | no shipper signature                                    | 52§31.121(a) |
|  | Commission supplied form not used                       | 52§31.121(a) |
| Estimate -   | not maintained by carrier                               | 52§31.122(b) |
|  | required information missing                            | 52§31.122(a) |
| Underestimate Report -   | not filed   | 52§31.124    |
| No weight tickets for moves over 40 miles<br>(if violation found during audit) |   | 52§31.125    |
| Inventory list or waiver -   | not prepared before shipment loaded<br>(under 40 miles) | 52§31.133(b) |
| No <b>current</b> criminal history record on employee.                         |   | 52§31.134(b) |
| *****Passenger Service vehicle violations.                                     |   |              |
|  | Unclean vehicle   | 52§29.403(2) |
|  | No heater   | 52§29.403(3) |
|  | Unsuitable/unclean trunk                                | 52§29.403(4) |
|  | Dents/gouges exterior                                   | 52§29.403(6) |
|  | Unmatched wheel covers                                  | 52§29.403(7) |
|  | No air conditioning                                     | 52§29.403(8) |
|  | Damaged/unsecured seats                                 | 52§29.403(9) |
| Shortest practical route not used.   |   | 52§29.313(b) |
| Under-age driver.  |   | 52§29.503    |

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\*\*\*\*\* One fine per type of violation per vehicle on random inspections, one fine per violation for entire fleet on annual inspections.

# PENALTY GUIDELINES

(continued)

## \$50 per violation

Non-OOS safety violations (6th or more).

|                                     |                            |                     |           |
|-------------------------------------|----------------------------|---------------------|-----------|
| *****Markings violations.           | Passenger                  | 52§29.71            |           |
|                                     | Property                   | 52§31.33            |           |
| Advertising not on roof.            |                            | 52§29.402(3)        |           |
| Certificate # not on advertisement. |                            | 52§21.2             |           |
| *****Administrative violations.     |                            |                     |           |
| Logs - taxi                         |                            | 52§29.313(c)        |           |
| Trip sheet - limo                   |                            | 52§29.335           |           |
| Lease – passengers                  |                            | 52§29.101(b)(2)     |           |
| Lease – property                    |                            | 52§31.32(c)(2)(vii) |           |
| Receipt – taxi                      |                            | 52§29.313(f)        |           |
| Fare posting – taxi                 |                            | 52§29.316(c)        |           |
| Consumer info                       | Decal                      | taxi                | 52§29.318 |
|                                     | Decal or receipt           | scheduled route     | 52§29.306 |
|                                     | Decal or receipt           | airport transfer    | 52§29.344 |
|                                     | Decal or receipt           | paratransit         | 52§29.356 |
|                                     | Decal, receipt or contract | limo                | 52§29.336 |

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\*\*\*\*\* One fine per type of violation per vehicle on random inspections, one fine per violation for entire fleet on annual inspections.

NOTE: All fines are doubled if the same safety violation is found during another inspection before it has been corrected.

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

|   |   |                       |
|---|---|-----------------------|
| <b>Pennsylvania Public Utility Commission</b> | : |                       |
| <b>Bureau of Transportation</b>               | : |                       |
| <b>And Safety</b>                             | : |                       |
|   | : | <b>Docket No.</b>     |
| <b>v.</b>                                     | : | <b>C-2011-2245312</b> |
|   | : |                       |
| <b>Blue and White USA, Inc. t/d/b/a</b>       | : |                       |
| <b>Altoona USA &amp; Transfer</b>             | : |                       |

**SETTLEMENT AGREEMENT**

**THIS AGREEMENT** is between the Pennsylvania Public Utility Commission's Bureau of Investigation and Enforcement (I&E)<sup>1</sup> through Assistant Counsel Heidi L. Wushinske, and Blue and White USA, Inc. t/d/b/a Altoona USA & Transfer, Respondent ("Blue and White" or "Respondent"), in the above-captioned proceeding. In pursuance of this Agreement, I&E and Respondent stipulate as follows:

**I. Background and Summary of Proceedings**

1. The parties to this Settlement Agreement are the Pennsylvania Public Utility Commission's Bureau of Investigation and Enforcement, P.O. Box 3265, Harrisburg, PA 17105-3265, and Respondent, Blue and White, who maintains its principle place of business at 1024 Chestnut Avenue, Altoona, Pennsylvania 16601.

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<sup>1</sup> Due to the Commission's reorganization, the Bureau of Investigation and Enforcement is now handling this matter, which was formerly assigned to the Bureau of Transportation and Safety (BTS).



2. On the date of the violation alleged in this complaint, Respondent held a certificate of public convenience issued by this Commission. Respondent has held a certificate at A-00119928 since 2003.

3. Pursuant to its enforcement responsibilities, BTS initiated the above-captioned complaint against Respondent.

4. On June 3, 2011, BTS Enforcement Officer Robert E. Crawford inspected Blue and White's 2005 Ford Taxi with license PA TX43779 and found that it failed to have operative air conditioning.

9. In a Complaint dated July 29, 2011, BTS requested that the Commission fine Respondent a total of \$100.00 as a result of this violation.

10. Respondent timely submitted a partial payment.

11. Upon further investigation, Respondent alleged that he corrected the inoperative air conditioning the same day that Officer Crawford found the violation.

12. This case was scheduled for hearing before Administrative Law Judge (ALJ) Mary D. Long on September 27, 2012.

13. During a brief recess, I&E reached a settlement with Blue and White.

## **II. Settlement terms**

14. I&E and Respondent, intending to be legally bound and for consideration given, desire to conclude this litigation and agree to stipulate to the following terms:

A. In recognition of the cost of further litigation, the time and expense of holding a hearing, and the merits of the parties' respective positions,

the parties have entered into negotiations and have agreed to settle the complaint according to the terms and conditions set forth herein.

- B. Respondent acknowledges that not having operative air conditioning in a vehicle used in taxi service constitutes a violation of the Public Utility Commission's regulations at 52 Pa. Code § 29.403(8).

Respondent therefore agrees to pay a civil penalty in the amount of \$50 within sixty days of approval of this Settlement Agreement.

- C. Respondent agrees that it will comply with the Public Utility Code and the Commission's regulations and orders in the future and take appropriate steps to alleviate future misconduct and/or noncompliance with the Public Utility Code and the Commission's regulations and orders.

### **III. Joint Statement in Compliance with the Commission's Policy Statement on Litigated and Settled Proceedings Involving Violations of the Public Utility Code and Commission Regulations**

15. Approval of this Settlement Agreement is consistent with the Commission's *Policy Statement for Litigated and Settled Proceedings Involving Violations of the Public Utility Code and Commission Regulations* ("Policy Statement"), 52 Pa. Code § 69.1201; *See also Joseph A. Rosi v. Bell-Atlantic-Pennsylvania, Inc.*, C-00992409 (March 16, 2000).

16. Under the Policy Statement, the Commission will consider specific

factors when evaluating settlements of alleged violations of the Public Utility Code and the Commission's Regulations. These factors are: (i) Whether the conduct at issue was of a serious nature; (ii) Whether the resulting consequences of the conduct at issue were of a serious nature; (iii) Whether the regulated entity made efforts to modify internal policies and procedures to address the conduct at issue and prevent similar conduct in the future; (iv) The number of customers affected and the duration of the violation; (v) The Compliance history of the regulated entity that committed the violation; (vi) Whether the regulated entity cooperated with the Commission's investigation; (vii) The Amount of the civil penalty or fine necessary to deter future violations; (viii) Past Commission decisions in similar situations; and (ix) other relevant factors. 52 Pa. Code § 69.1201(c).

17. The Commission will not apply the standards as strictly in settled cases as in litigated cases. 52 Pa. Code § 69.1201(b). While many of the same factors and standards may still be considered, in settled cases the parties "will be afforded flexibility in reaching amicable resolutions to complaints and other matters so long as the settlement is in the public interest." 52 Pa. Code § 69.1201(b).

18. The first factor considered in this case was whether Respondent's alleged acts and omissions amounted to willful fraud or misrepresentation, or were merely administrative or technical errors. The alleged conduct in this case involves failure to have operative air conditioning in a vehicle used in taxi service. While this is a violation of the Commission's regulations, it does not rise to fraud or misrepresentation.

19. The second factor considered in this case was whether the resulting

consequences of Respondent's alleged actions or omissions were of a serious nature. In this case, Respondent's alleged conduct did not result in any serious consequences.

Although, there is potential for discomfort of the traveling public when air conditioning in a taxi is not functioning, there is no indication that this happened in this case.

Furthermore, it is rare that a malfunctioning taxi air conditioner would result in serious consequences.

20. The third factor to be considered in this case, namely, whether Respondent's alleged conduct was intentional or negligent, does not apply to the present case because this proceeding is a settled matter. To the extent this factor is to be considered, it appears that Respondent's conduct was negligent in nature.

21. With regard to the fourth standard in the Commission's Policy Statement, whether the entity made efforts to modify internal policies and procedures to address the alleged conduct at issue and to prevent similar conduct in the future, Respondent stated that the air conditioning was fixed later that day.

22. The fifth standard in the Policy Statement deals with the number of customers affected and the duration of the violation. In this case, there is no evidence that any customers were affected. The air conditioning was found to be inoperative during an inspection performed by a Commission Officer and Respondent stated that he fixed the air conditioning later that day.

23. The Policy Statement's sixth standard is a consideration of the compliance history of the entity. Respondent has held a certificate from this Commission since 2003. Overall, the Commission has issued eight formal complaints against Respondent,

including the two at issue in this memorandum. While, Respondent's compliance history is not entirely favorable, it did takes steps to promptly correct the violation.

24. The seventh standard in the Policy Statement is whether the regulated entity cooperated with the Commission's investigation. Respondent has cooperated throughout this investigation.

25. The amount of the civil penalty or fine necessary to deter future violations is the eighth standard in the Policy Statement. The parties submit that a civil penalty in the amount of Fifty Dollars (\$50), is sufficient to deter Respondent from committing any violations in the future, as the recommended civil penalty for this violation is only one hundred dollars (\$100). This Settlement Agreement recognizes Respondent's good faith efforts to comply with the Commission's regulations.

26. The ninth standard examines past Commission decisions in similar situations. Counsel is not aware of any decisions with this precise fact pattern. However, when all relevant factors are taken into account, this settlement is consistent with past Commission actions. Moreover, since this is a settled matter, it should be considered on its own merits.

27. The parties submit that an additional relevant factor – whether the case was settled or litigated – is of pivotal importance to this Settlement Agreement. A settlement avoids the necessity for the prosecuting agency to prove elements of each allegation. In return, the opposing party in a settlement agrees to a lesser fine or penalty. Both parties negotiate from their initial litigation positions. The fines and penalties in a litigated proceeding have always been different from those that result from a settlement.

28. This document represents the Settlement Agreement in its entirety. No changes to obligations set forth herein may be made unless they are in writing and are expressly accepted by the parties involved. This Agreement shall be construed and interpreted under Pennsylvania law.

29. None of the provisions of the Settlement Agreement or statements herein shall be considered an admission of any fact or culpability. I&E acknowledges that this Agreement is entered into with the express purpose of settling the asserted claims regarding the specific alleged violations of the Public Utility Code and the regulations promulgated thereunder against, or prejudice to, any position which any party may adopt during any subsequent proceeding of whatever nature.

30. The parties agree that the underlying allegations were not the subject of any hearing or formal procedure and that there has been no order or findings of fact rendered in this matter.

31. This Settlement Agreement is conditioned upon the Commission's approval without modification.

32. The parties agree to waive the exception period, thereby allowing this Settlement Agreement to be presented directly to the Commission for review, pursuant to 52 Pa. Code § 5.232(e). The parties reserve the right to withdraw from this Settlement Agreement if it is modified in any manner, or if any adverse response is filed.

**WHEREFORE**, I&E and Blue and White USA, Inc. respectfully request that this Honorable Administrative Law Judge approve the terms of the Settlement Agreement.




## CERTIFICATE OF SERVICE

I hereby certify that I am this day serving the foregoing document upon the persons listed and in the manner indicated below:

**Notification by first class mail addressed as follows:**

Blue & White USA, Inc. t/d/b/a/ Altoona  
USA & Transfer  
1024 Chestnut Avenue  
Altoona, PA 16601

Administrative Law Judge Mary D. Long  
Pennsylvania Public Utility Commission  
Piatt Place, Suite 220  
301 5<sup>th</sup> Avenue  
Pittsburgh, PA 15222



Heidi L. Wushinske  
Prosecutor  
Attorney ID #93972  
(Counsel for Pennsylvania Public Utility  
Commission)

P.O. Box 3265  
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Dated: November 2, 2012

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